

CHAPTER 13. PROBATE RULES

13.1 Applicability of Rules

The rules stated in this chapter, as well as those stated in Chapter 7 (Presentation, Filing, Service and Maintenance of Court Papers) and as to contested matters, those stated in Chapter 8 (Law and Motion) shall govern all proceedings involving estates of decedents and guardianship, conservatorship and testamentary trusts.

Eff. Jan. 1, 1999.

13.2 Submission of Matter Without Appearance by Counsel or Witnesses

A matter that by law may be determined by declaration, affidavit or verified pleading and without testimony may ordinarily be submitted for appropriate action by the court without appearance by counsel or witnesses provided that all necessary papers, including declarations and proposed orders must be delivered to the clerk within the time limit prescribed. The proposed orders, when delivered, shall bear the date on which the hearing is originally noticed.

- a.** All filings of probate matters setting a hearing date shall be filed no later than 1:30 p.m. of the fourth court day prior to the probate calendar. All filings for a hearing on the probate calendar presented to the clerk after 1:30 p.m. on the fourth court day prior to the probate calendar shall be calendared for the next probate calendar that is more than four court days thereafter. The clerk shall not accept any moving papers setting a hearing date less than four days from the filing date unless a signed court order shortening time is presented along with the moving papers.
- b.** Upon the call of the probate calendar as to any matter for which an appearance is required a failure of the moving party to appear when called may, in the court's discretion, cause the matter to be ordered off calendar.
- c.** When a matter is to be dropped, counsel for the moving party shall promptly notify the probate clerk.

Eff. Jan. 1, 1999.

13.3 Nonresident Personal Representative to Furnish Bond

Notwithstanding a waiver of bond by operation of law or contained in a will, every nonresident of the State of California who is not a sole heir, and who requests independent powers, shall furnish the required statutory bond as a condition of said persons appointment as personal representative, unless a waiver of bond is filed by all of the heirs of the decedent's estate.

Eff. Jan. 1, 1999.

13.4 Certificate of Death

In all proceedings in which the fact of death is to be determined by the court, there shall be filed with the court as an attachment to the petition or as a separate exhibit filed before the hearing a certified copy of the applicable certificate of death.

Eff. Jan. 1, 1999.

13.5 Required Form of Accounts

All accounts filed in probate proceedings, which shall include guardianship, conservatorship and testamentary trust accounts, shall conform to California Probate Code Sections 1061 through 1064 as they may be amended.

Eff. Jan. 1, 1999. As amended, eff. Jan. 1, 2000.

13.6 Appointment of Expert to Analyze Complex Accounts and Surcharge of Cost Against Representatives

When, because of the volume or complexity of an account, an analysis thereof by the court would appear to be unusually time consuming or difficult, the court will on its own motion appoint an expert, usually a certified public accountant to analyze the account and report to the court. The compensation for such expert shall be fixed by the court and ordered paid from the assets of the estate as a cost of administration. If the court finds that the account was unnecessarily voluminous or complex the representative or the attorney, or both, shall be surcharged the amount of such compensation.

Eff. Jan. 1, 1999.

13.7 Allowance of Claims of Personal Representative

Claims of personal representative shall be allowed pursuant to Probate Code section 9252 only upon a written motion for the allowance thereof after every person interested in the estate shall have been given notice of the hearing of said motion, in

the manner provided by Code of Civil Procedure section 1013 and only after every person interested in the estate shall have been given a copy of said motion except that the court may approve such claim ex parte if it is for reimbursement for payment of funeral or burial expenses. The motion shall set forth the specific dollar amount of the claim or the specific item to which the claim refers.

Eff. Jan. 1, 1999.

13.8 Statement Regarding Bond on Inventory and Appraisal

Counsel for the personal representative or the personal representative, if acting without counsel, will complete all appropriate statements regarding the representative's bond which are called for on the inventory and appraisal form in current use with the approval of the Judicial Council of California.

Eff. Jan. 1, 1999.

13.9 Inventory and Appraisal - Certificate Required Under Revenue and Taxation Code, Section 480

Pursuant to Probate Code 8800(d), the inventory and appraisal shall be accompanied by a certification under Revenue and Taxation Code section 480. A certification form (Property Tax Certification) is available from the clerk's office.

Eff. Jan. 1, 1999.

13.10 Order of Probate

No Order of Probate shall be certified unless letters have issued.

Eff. Jan. 1, 1999.

13.11 Instructions from the Court

A Petition for Instructions made pursuant to Probate Code section 9613 et seq. or Probate Code section 10500 shall set forth the factual situation upon which the petitioner seeks instruction and it shall set forth in detail the instructions that the petitioner believes will be in the best interest of the estate and the parties interested therein.

Eff. Jan. 1, 1999.

13.12 General Instructions to Conservator/Guardian

In all conservatorship and guardianship matters, no letters shall issue unless the conservator or guardian have executed and filed with the court General Instructions. The form of general instructions may be obtained from the clerk's office.

Eff. Jan. 1, 1999.

13.13 Duties and Liabilities Statement

No Duties and Liabilities Statement will be accepted for filing if the social security or driver's license number is included on the statement.

Eff. Jan. 1, 1999.

13.14 Fees of Attorneys and Fiduciaries

Refer to Chapter 19 of these rules.

Eff. Jan. 1, 1999.